

FILED

JAN 17 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

XIAOLONG QI,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-72055

Agency No. A79-532-398

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted January 9, 2006^{**}

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Xiaolong Qi, a native and citizen of China, petitions for review of an order of the Board of Immigration Appeals ("BIA") dismissing the appeal from an Immigration Judge's ("IJ") denial of his applications for asylum, withholding of

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

removal, and relief under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review sua sponte the question of whether the BIA had jurisdiction. *See Da Cruz v. INS*, 4 F.3d 721, 722 (9th Cir. 1993).

We remand this case to the BIA for it to consider expressly whether it has jurisdiction over Qi’s appeal in light of the “rare circumstances” exception explained in *Oh v. Gonzales*, 406 F.3d 611, 614 (9th Cir. 2005). *See INS v. Ventura*, 537 U.S. 12, 16-17 (2002) (holding that when an agency has not reached an issue, the proper course is to remand to the agency in the first instance to address).

PETITION FOR REVIEW GRANTED and REMANDED.